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March 13, 2003

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MAR 13 2003

By Messenger

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: One Call Communications, Inc. and OCMC, Inc. Application to
Assign International Section 214 Authorizations and to Transfer
Control of Domestic Section 214 Authorization, WC Docket No. 02-
231

Dear Ms. Dortch:

On behalf of OCMC, Inc., attached is a copy of a letter to William Dever, Assistant Division Chief, Competition Policy Division of the Wireline Competition Bureau, submitted in connection with the above-referenced Section 214 application. An original and four copies of this letter and the attachment are enclosed for filing in the above-referenced proceeding. Also enclosed is a duplicate copy to be date-stamped and returned to the courier.

If you have any questions, please call the undersigned.

Yours truly,

Frank W. Krogh
Frank W. Krogh

Attachment

cc: William Dever
Colleen Heitkamp
Dennis Johnson
Ann C. Bernard
Steven A. Augustino

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March 11, 2003

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William Dever
Assistant Division Chief
Competition Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

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MAR 11 2003

Federal Communication Commission
Bureau / Office

Re: One Call Communications, Inc. and OCMC, Inc. Application
to Assign International Section 214 Authorizations and to
Transfer Control of Domestic Section 214 Authorization,
WC Docket No. 02-321

Dear Mr. Dever:

This letter, submitted on behalf of OCMC, Inc. ("OCMC"), follows up on our discussion at our recent meeting concerning the pending application to transfer control of the domestic Section 214 authorization now held by One Call Communications, Inc. to OCMC.¹ As the applicants stated at the meeting, the consistent policy of the Federal Communications Commission ("Commission") has been and remains that pending applications to assign or transfer control of Commission authorizations are granted despite allegations of an unauthorized transfer of control.² The full Commission and individual Bureaus have concluded consistently that the public interest is not served by delaying grant of pending applications even if the licenses or authorizations involved are the subject of an alleged unauthorized transfer of control. Rather, unauthorized

¹ See One Call Communications, Inc. and OCMC, Inc. Application to Assign International Section 214 Authorizations and to Transfer Control of Domestic Section 214 Authorization, WC Docket No. 02-321 (filed July 14, 2002; accepted for filing Aug. 27, 2002, DA No. 02-2092; removed from streamlined treatment Sept. 26, 2002, DA No. 02-2430).

² OCMC emphasizes that no unauthorized transfer of control issues are presented by this application or by the underlying transaction. This letter addresses only the procedural issue of whether the application should be granted notwithstanding the presence of such issues.

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William Dever
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transfers of control are investigated independently and addressed through the Commission's enforcement and forfeiture procedures.

In *Application of FM Broadcasters of Douglas County* ("FBDC"),³ the Commission stated that "it is well settled that the Commission may grant an assignment application despite the potential for subsequent enforcement action. If it can *make* the necessary qualifications findings."⁴ In that case, the Audio Services Division's ("ASD's") grant of an assignment application was challenged on the ground that the assignor had engaged in an unauthorized transfer of control of the station.⁵ The Commission upheld the ASD decision, concluding that "no basic qualification issue is raised by the unauthorized transfer of control violation" and that the staffs decision to pursue an independent enforcement action for the unauthorized transfer of control was appropriate.⁶

FBDC was cited in *Edwin L. Edwards, Sr. and Carolyn C. Smith* ("Edwards"),⁷ in which the Commission again held that, notwithstanding a **demonstrated** unauthorized transfer of control of a broadcast licensee, it was not necessary to designate applications for transfer of control of the licenses for hearing on the issue of such unauthorized transfer. Rather, the applications were granted, and a Notice of Apparent Liability for forfeiture was issued as redress for the unauthorized transfer.⁸

Similarly, in *IDB Communications Group, Inc.* ("IDB"),⁹ the International Bureau stated that even if there has **been** an unauthorized transfer of control of an entity

10 FCC Rcd 10429 (1995).

⁴ *Id.* at 10430.

⁵ ASD's application grant noted that an apparent violation of Section 310 of the Act existed and that the grant "is **without** prejudice to whatever **further enforcement** action the Commission **may** deem appropriate regarding the apparent unauthorized transfer of control." *Id.* at 10430. The Enforcement Division of the Mass Media Bureau subsequently issued Notices of Apparent Liability for the unauthorized transfer of control. *Id.* at 10430.

⁶ *Id.*

16 FCC Rcd 22236 (2001)

⁸ *Id.* at 22249-52.

⁹ 10 FCC Rcd 1110 (IB 1994). *See also, Crescomm Transmission Services, Inc.*, 9 FCC Rcd 5312 (IB 1994) (granting assignment application "without prejudice to any **further action** the Commission might take with respect to the . . . transaction that occurred without prior Commission approval"); *Letter from Roy J. Stewart, Chief, Mass Media Bureau, to Mountain Signals, Inc.*, 6 FCC Rcd 2874 (MMB 1991) (granted broadcast license **assignment** application

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that is the subject of a transfer of control application. the "appropriate sanction for this type of violation is a fine and not revocation of license."¹⁰ In this case, the Bureau was responding to a petition to deny an application that sought consent to transfer control of various telecommunications and satellite authorizations. The petition alleged that one of the authorizations was under the de facto control of a third party. The Bureau granted the application, noting that it intended to investigate independently the unauthorized transfer of control. The Bureau stated that "we do not believe that the public interest would be served by holding up the proposed acquisition ... even if there has been an unauthorized transfer of control of the [licensee]."

There is no reason to deviate from the Commission's consistent approach in the present circumstances, particularly given that the pendency of the application has exceeded the 180 day period set forth in Section 63.03(c)(2) of the Commission's rules for ruling on applications removed from streamlined treatment." Based upon the standards set forth in the above-cited cases, the instant application does not present the "extraordinary circumstances" justifying further delay under Section 63.03(c)(2).¹³ Please do not hesitate to call the undersigned if you have any questions about this matter.

Yours truly,



Cheryl A. Tritt

cc: Colleen Heitkamp
Dennis Johnson
Ann C. Bernard
Steven A. Augustino

for transaction that had closed prior to authorization but then issued Notice of Apparent Liability for the unauthorized transfer of control)

¹⁰ *IDB*, 10 FCC Rcd at 1114.

¹¹ *Id.*

¹² 47 C.F.R. § 63.03(c)(2). The application was accepted for filing on August 27, 2002. The 180-day period thus ended on February 23, 2003.

¹³ *Id.*